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MEMO ENDORSED

February 5, 2016

**\*\*CORRECTED COPY\*\*****By ECF and Hand Delivery**

The Honorable William H. Pauley III  
 U.S. District Court, Southern District of New York  
 Daniel Patrick Moynihan U.S. Courthouse  
 500 Pearl Street  
 New York, NY 10007-1312

*The Dial Corporation, et al. v. News Corporation, et al.,  
 No. 13-cv-06802 (WHP) (S.D.N.Y.)*

Dear Judge Pauley:

We write on behalf of Defendants in the above-referenced matter to request permission to issue deposition subpoenas to the custodians of records of two non-parties, Valassis Communications, Inc. and Catalina Marketing Corporation.

As we discussed with Your Honor at the January 26, 2016 pretrial conference, over the past several months, five non-parties who produced documents in response to subpoenas have certified that their documents are authentic business records pursuant to Fed. R. Evidence 902(11). Unfortunately, two of NAM's competitors, Valassis and Catalina, have refused to certify certain of their own documents as authentic business records. We tried to resolve the matter through a stipulation with Plaintiffs but that effort also has been unsuccessful. Plaintiffs and Valassis have a common interest agreement in place related to this litigation. Accordingly, we reluctantly seek permission from the Court to issue deposition subpoenas to address these document issues.

The four narrow categories of documents for which NAM requires certification or testimony should not be the subject of any *bona fide* dispute:

- SEC filings and transcripts of investor calls. Valassis has refused to certify that its own SEC Form 10-K, and ten transcripts of investor calls, are authentic and that the statements were made as part of the ordinary

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course of Valassis's business. Seven of the transcripts were produced after the close of discovery by J.P. Morgan Securities LLC, an agent of Harland Clarke Holdings Corporation in its 2014 acquisition of Valassis. Versions of transcripts of all but one of the investor calls for which NAM seeks certification are available on the archives of Valassis's own investor website. Catalina likewise refuses to certify that six of its SEC filings are its own business records.

- Valassis's own signed agreements: Valassis has refused to certify that 50 signed contracts between Valassis and retailers or CPGs are authentic business records. Valassis itself produced all but three of the agreements, which were instead produced by Valassis's parent company, Harland Clarke.
- Valassis's own data. There are 84 data files, all produced by Valassis in response to our subpoena requesting data on their in-store sales and profitability projections. These documents come straight out of Valassis's own files and accounting system. Experts for both NAM and the Plaintiffs have relied on the data.
- Valassis marketing materials that it sent to retailers and CPGs. Valassis produced, and NAM seeks to certify, twelve documents that Valassis sent to retailers and CPGs promoting its in-store capabilities.

For these reasons, NAM respectfully requests permission to issue subpoenas to the custodians of records of Valassis and Catalina for depositions concerning the above-identified documents.

Respectfully submitted,

/s/ Kenneth A. Gallo

Kenneth A. Gallo

cc: Counsel of Record (by ECF)

The parties are directed to appear for a teleconference on February 11, 2016 at 3:45pm. The parties should provide this Court with a deal-in.

SO ORDERED:

  
WILLIAM H. PAULEY III  
U.S.D.J.

2/10/16